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No. 76-1750

HAROLD D. STUMP, *et al.*,

Petitioners,

—v.—

LINDA KAY SPARKMAN and
LEO SPARKMAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE INDIANA CIVIL LIBERTIES UNION, AND THE MENTAL HEALTH LAW PROJECT, TO FILE BRIEF *AMICI CURIAE*
and
BRIEF *AMICI CURIAE*

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No. 76-1750

HAROLD D. STUMP, et al.,
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v.

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On Writ of Certiorari to the
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for the Seventh Circuit

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION, THE INDIANA CIVIL LIBERTIES UNION, AND THE MENTAL HEALTH LAW PROJECT FOR LEAVE TO FILE BRIEF AMICI CURIAE

The American Civil Liberties Union, the Indiana Civil Liberties Union, and the Mental Health Law Project respectfully move, pursuant to Rule 42 of this Court's rules, for leave to file the within brief amici curiae. Counsel for the Respondents has consented to the filing of this brief. */ Counsel for the Petitioners have refused consent.

*/ A copy of that letter is being filed with the Clerk.

The American Civil Liberties Union is a nationwide, non-partisan organization of two hundred thousand members, dedicated to defending the principles embodied in the Bill of Rights to the Constitution. The Indiana Civil Liberties Union is the state affiliate of the ACLU, operating in Indiana.

The ACLU and its affiliates have a deep interest in preserving the vital role of 42 U.S.C. §1983 as a deterrent to official lawlessness. Accordingly, the ACLU has sought to maintain effective remedies for deprivations of civil rights by state officials of every kind. ACLU attorneys represented petitioners in Pierson v. Ray, 386 U.S. 547 (1967), and Scheuer v. Rhodes, 416 U.S. 232 (1974). The ACLU has also participated as amicus in O'Connor v. Donaldson, 422 U.S. 563 (1975), and in other cases to support effective remedies for persons whose civil rights have been violated, in the belief that such judgments can ensure greater fidelity to constitutional obligations by state officials.

Sterilization abuse has been another large and growing concern of the ACLU, and ACLU attorneys, together with the Reproductive Freedom Project of the ACLU Foundation, have represented many women seeking to remedy and deter the resulting violations of substantive

and procedural rights. E.g., Walker v. Pierce, No. 75-2212, 75-2213 (4th Cir. July 26, 1977).

The Mental Health Law Project is a foundation-supported, public-interest organization dedicated to the protection and advocacy of persons who are labeled as mentally or developmentally disabled.

The Project has made tangible progress in safeguarding the civil rights of mentally handicapped citizens by seeking and often obtaining relief through the court system in such landmark cases as Wyatt v. Stickney [Hardin], 325 F.Supp. 781 (M.D. Ala. 1971), (hearings on standards ordered), 334 F.Supp. 1341 (N.D. Ala. 1971), enforced, 344 F.Supp. 373, 387 (N.D. Ala. 1972), affirmed in part, modified in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. Nov. 8, 1974) (right to treatment and sterilization safeguards); Mills v. Board of Education, 348 F.Supp. 866 (D.D.C. 1972) (right to education); NYSARC v. Carey, 393 F.Supp. 715 (E.D. N.Y. 1975), 357 F.Supp. 752 (E.D. N.Y. 1973) (right to protection from harm); and O'Connor v. Donaldson, 422 U.S. 537 (1975) (right to liberty).

The Mental Health Law Project has a long-standing interest in both substantive issues involved in the instant case -

sterilization and the doctrine of judicial immunity. In Wyatt v. Stickney, the Project was successful in its efforts to have Alabama's involuntary sterlization statute held unconstitutional. In connection with that litigation, the Project recommended standards to the district court which would protect mentally retarded residents of Partlow State School from having so-called "voluntary" sterlizations imposed upon them for administrative or management reasons not in their own best interest, while at the same time preserving the option of voluntary sterilization for residents who were competent and who genuinely desired to undergo this procedure. At present, the Project is representing the Connecticut Association for Retarded Citizens and an individual in Virginia in two separate cases concerning sterilization of mentally retarded persons. The Project has also been successful in having certain state mental health officials held in contempt or assessed with monetary damages for their failure to protect the constitutional rights of mentally handicapped persons under their supervision.

Amici thus have a strong interest in the issues presented by this case, and more importantly, extensive experience with those issues. With the benefit of this experience, Amici will make arguments which will not, to our acknow-

ledge, be made by the parties. The brief submitted with this motion will argue that this is an inappropriate case to consider expansion of the judicial immunity presently available under Pierson v. Ray, 386 U.S. 547 (1967), and Bradley v. Fisher, 80 U.S. 355 (1871), and suggest reasons why the petition for certiorari might appropriately be dismissed as improvidently granted. Amici will demonstrate the relevance of 42 U.S.C. §1988 to the immunity question resolved by the Court of Appeals, and argue that §1988 supports the decision below.

Finally, the brief provides the Court with the legislative history of the Civil Rights Act of 1871, crucial for understanding the hopes and expectations the 42nd Congress had for what is now 42 U.S.C. §1983.

In order to present this analysis, Amici respectfully move for leave to file the within brief.

Respectfully submitted,

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IN THE
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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION, THE INDIANA CIVIL LIBERTIES UNION, AND THE MENTAL HEALTH LAW PROJECT, AMICI CURIAE

INTEREST OF AMICI

The interest of amici appears from the foregoing motion.

STATEMENT OF THE CASE

In 1971, defendant Judge Harold D. Stump "approved" a petition brought by defendant Ora McFarlin to have her 15-year-old daughter, Linda, sterilized. That "approval" was not sanctioned by Indiana statutory authority or by Anglo-American common law. No guardian ad litem was appointed to represent Linda's interest. She received neither notice nor hearing before the approval. She had no knowledge that any approval had been given, or even that sterilization had taken place, since it was described to her as an appendectomy. Although the Circuit Court on which Judge Stump sits is a court of record, the petition was never filed. For these reasons, Linda Sparkman had no opportunity to contest or to appeal the approval that authorized her sterilization.

Linda and Leo Sparkman, whom she subsequently married, brought an action seeking damages under 42 U.S.C. §1983 and

1985(3), contending that the actions of the defendants in sterilizing her or causing her to be sterilized violated her constitutional rights. The district court for the Northern District of Indiana, Fort Wayne division, dismissed the action and held that Judge Stump was acting within his jurisdiction and therefore immune from suit. The court further implicitly held that the other defendants were clothed with Judge Stump's immunity by ruling that their actions, taken under color of an immune official's actions, could not be "state actions" within the meaning of 42 U.S.C. §1983. The Court of Appeals for the Seventh Circuit reversed, holding that Judge Stump's "approval," unsupported by statutory or common law authority, was entered in the complete absence of subject matter jurisdiction.

SUMMARY OF ARGUMENT

This case raises no novel questions of law. Judge Swygert, writing for an unanimous panel in the Court of Appeals, dealt with the judicial immunity issue according to the settled precedents of Bradley v. Fisher, 80 U.S. (13 Wall) 355 (1871) and Pierson v. Ray, 386 U.S. 547 (1967), breaking no new ground. Amici will demonstrate below that respondent is correct in arguing that the Court of Appeals committed no error in reversing the district court's Rule 12(b)(6) dismissal on the grounds of judicial immunity.[1] Accordingly, Amici

1 The Court of Appeals had no occasion to consider the district judge's further ruling that there could be no state action to base actions against the remaining private defendants if Judge Stump were immune. However, that Court recently criticized the theory relied on by the district court, noting the problems caused by extending immunity to private citizens acting in concert with immunized officials. See Grow v. Fischer, 523 F. 2d 875, 878-879 (7th Cir. 1975). Should this Court reverse the [Footnote continued]

suggest that the decision below be affirmed.

It is possible, of course, that the Court granted certiorari in order to reconsider the scope of judicial immunity. If so, Amici respectfully suggest that this is a particularly inappropriate case to undertake such a reconsideration, and that the Court might instead dismiss the petition for certiorari as improvidently granted. Belcher v. Stengel, 50 L. Ed. 2d 269 (1977); The Monrosa v. Carbon Black, Inc., 359 U.S. 180 (1959). Two considerations support this recommendation. First, because Judge Stump was on clear and explicit notice that he would have no immunity under Indiana law for any acts taken in the clear absence of

[Footnote 1 continued]
decision below, this case should be remanded to permit the Court of Appeals to consider whether persons acting in concert and conspiracy with judges should be clothed with immunity as well.

personal jurisdiction,[2] the imposition of liability against him for such acts here is neither surprising nor unfair, nor does it represent an attempt by federal courts to require stricter standards of state judicial behavior than the state, in its own wisdom, has decreed. Second, and of greater importance, 42 U.S.C. §1988 directs federal courts in civil rights cases to apply either federal or state immunity law, whichever better serves the remedial purposes of §1983. Compare Sullivan v. Little Hunting Park, 396 U.S. 229, 240 (1969). Therefore, if the federal immunity rule under Bradley were broadened to afford Judge Stump immunity, respondents would

2 See, e.g., State ex rel. Egan v. Wolevar, 127 Ind. 306, 315, 26 N.E. 762, 765 (1891); State v. Libbert, 96 Ind. App. 84, 90, 177 N.E. 873, 875 (1931) (en banc), reh. denied, id., 180 N.E. 757 (1932). See generally infra, Point I B. There has been no claim here, nor could there be, that Judge Stump had personal jurisdiction over Linda Sparkman, or that he would have had such jurisdiction but for some procedural irregularity or defect.

be entitled to application of Indiana law, which would then be better suited to remedy the deprivation of their civil rights. In short, even if the federal immunity rule of Bradley were broadened, , respondents would prevail. Accordingly, in the circumstances of this case reconsideration should not be undertaken because it would be in the nature of an advisory opinion.

Finally, as we will argue, Pierson itself rests on an incorrect reading of the legislative history of §1 of the Civil Rights Act of 1871, and represents a radical departure from, and constriction of, the federal remedies Congress intended to provide in federal forums to protect federal constitutional rights. The intentions of the 42nd Congress, which enacted §1983, argue strongly against further broadening of judicial immunity. Amici recognize that the Court is unlikely to reconsider Pierson and do not request the Court to do so. However, if settled law of judicial immunity is to be reconsidered

in this case, the Court should restore the remedies which the Civil Rights Act of 1871 intended to provide against the wilful deprivation of rights "independent of law, uncontrolled by magistrates." [3]

ARGUMENT

I UNDER SETTLED LAW, DEFENDANT STUMP IS NOT ENTITLED TO JUDICIAL IMMUNITY BECAUSE HE ACTED IN THE CLEAR ABSENCE OF PERSONAL JURISDICTION.

Petitioners' brief does not address the question of personal jurisdiction.[4]

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3 Senator Sherman of Ohio (summing up the conference report), Cong. Globe, 42d Cong., 1st Sess., Apr. 19, 1871, p. 820, col. 2.

4 Although the Court of Appeals did not reach the issue of personal jurisdiction, relying on the absence of subject-matter jurisdiction for its finding that Judge Stump was not immune, respondents' claim that the clear absence of personal jurisdiction deprived Judge Stump of
[Footnote continued]

Apparently, petitioners' argument is that once a judge demonstrates that he had subject-matter jurisdiction, he is protected by judicial immunity, even if he acted without any semblance of personal jurisdiction. Petitioners are wrong. Adoption of their position would work a major, restrictive change in the current law of judicial immunity.

A. Federal Law Provides No Immunity for Acts Taken in the Clear Absence of Personal Jurisdiction

In 1927, after briefing and oral argument, this Court affirmed a decision of the Court of Appeals for the Second Circuit which stated existing judicial immunity law as follows: "'where a judge has full jurisdiction of the subject matter and of the parties, he is not liable civilly where he acts erroneously, illegally or irregularly ...'" Yaselli v. Goff, 12 F. 2d 396, 402

[Footnote 4 Continued]
immunity was fully presented to the courts below, and can be used here as an alternative ground of decision. Massachusetts Mutual Life Company v. Ludwig, 426 U.S. 479 (1976).

(2d Cir. 1926), aff'd mem., 275 U.S. 503 (1927) (emphasis added).[5] And a careful reading of the leading case of Bradley v. Fisher, 80 U.S. 335 (1872), as well as a review of relevant federal and Indiana case law generally, shows clearly that before a judge can invoke judicial immunity for his actions, he must have both personal and subject-matter jurisdiction.[6]

The petitioners' failure to cite, distinguish, or attack any of these holdings in their brief cannot cause this large and settled body of law to disappear. Because the Sparkmans alleged --and defendants did not dispute--that Judge Stump lacked personal jurisdiction in this case, the Court of Appeals correctly held that the motion to dismiss on grounds of judicial immunity was improperly granted.

5 Yaselli was cited extensively and reaffirmed by this Court in Imbler v. Pachtman, 424 U.S. 409 (1975).

6 English law, from which American law of judicial immunity derives, appears similarly to have denied judicial immunity where a [Footnote continued]

Federal courts considering the question have long expressly recognized that judicial immunity requires personal jurisdiction. The Sixth Circuit has stated that "judges of courts of superior or general jurisdiction are not liable for civil action for their judicial acts where jurisdiction exists over the subject matter and the defendant."Cuiska v. City of Mansfield, 250 F. 2d 700, 702 (6th Cir. 1957) (emphasis added).[7] See also Kenney v. Fox, 232 F. 2d 288 (6th Cir.), cert. denied sub nom. Kenney v. Killian, 352 U.S. 855 (1956). According to the Eighth Circuit, "a useful test has been suggested in Wade v. Bethesda Hospital, where the court said:

[Footnote 6 Continued]
court acts in clear absence of personal jurisdiction. The Marshalsea, 10 Coke 68, 77 (Fraser 1826).

7 Although Cuiska v. City of Mansfield was decided before this Court's decision in Pierson v. Ray, 386 U.S. 547 (1967), Cuiska v. City of Mansfield, in common with cases decided in other circuits, held that Bradley v. Fisher was applicable to cases arising under the Civil Rights Act of 1871.

'we begin by defining the concept of jurisdiction as it is used in the context of judicial immunity. The cases are clear that the term jurisdiction means that the judge must have both jurisdiction over the person and subject matter if he is to be immune from suit for an act performed in his judicial capacity.'" Duba v. McIntyre, 501 F. 2d 590, 592 (8th Cir. 1974), citing Wade v. Bethesda Hospital, 357 F. Supp. 671 (S.D. Ohio 1971) (emphasis added). According to the Tenth Circuit, "It is a principle of universal acceptation in its relation to judges at all levels that a judge is not liable in damages resulting from an order entered or a judgment rendered in an action or proceeding over which the court has jurisdiction of the subject matter and of the parties..." Ryan v. Scoggin, 245 F. 2d 54, 58 (10th Cir. 1957) (emphasis added). See also O'Bryan v. Chandler, 352 F. 2d 987, 988 (10th Cir.), cert. denied, 384 U.S. 926 (1969). And as noted above, the Second Circuit agrees. Yaselli v. Goff, 12 F. 2d 396, 402 (2d Cir. 1926), aff'd

mem., 275 U.S. 503 (1927). In Wade v. Bethesda Hospital, 337 F. Supp. 671 (S.D. Ohio 1971), a federal district court held that a probate judge who ordered sterilization of the plaintiff was not protected by the doctrine of judicial immunity. Although the basis for that holding was that there was no set of conditions under Ohio law which would permit such an order, the court did stress that a judge must have jurisdiction over the person if he is to be immune from suit for an act performed in his judicial capacity. (337 F. Supp. at 673).

Although certain language in Bradley v. Fisher, 80 U.S. 335 (1872), is cited by petitioners to support their contention that subject-matter jurisdiction alone is sufficient to establish judicial immunity, a careful reading of Bradley shows that the Court focused its attention upon subject-matter jurisdiction only because the disputed contemptous acts had occurred

directly in the presence of the judge.[8] This is made explicit by the Court's statement, conveniently omitted from petitioners' Brief, that "the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person applies in cases of this kind, and for the same reason." 80 U.S. at 352 (emphasis added).

8 The Bradley case was brought by a lawyer who had represented a defendant alleged to have participated in the assassination of President Lincoln. During a recess, as Judge Fisher was descending from the bench, Bradley accosted him in a "rude and insulting manner" and charged the judge with having insulted him from the bench during the trial. The judge disclaimed any intention of insulting Bradley and assured Bradley that he entertained for him no feelings other than those of respect. Bradley refused to accept that disclaimer and threatened the judge with "personal chastisement." Immediately after discharging the jury in that case, Judge Fisher entered an order from his chambers striking Bradley's name from the roll of attorneys who could practice before the court. Subsequently, Bradley brought an action for damages against Judge Fisher.

As the Bradley court also observed, "the power of the court should never be exercised without notice to the offending party of the grounds of complaint against him, and affording him ample opportunity of explanation and defense. This is a rule of natural justice,..." 80 U.S. at 354. In Bradley, the alleged insulting language and offensive conduct toward the judge occurred in the direct presence of the judge during a recess. Because of this the Supreme Court reasoned that the judge had personal jurisdiction when he acted. Thus, Bradley supports the proposition that judicial immunity applies where a judge has acted with both subject-matter and personal jurisdiction.

B. Indiana Law Provides No Immunity for Acts Taken in the Clear Absence of Personal Jurisdiction

Indiana law is in complete accord. Only two years after this Court's decision in Bradley v. Fisher, the Indiana Supreme Court set forth its understanding of the common law: "judicial officers are not

liable for mistakes of judgment or erroneous decision, but they are liable for trespasses committed under color of judicial authority where they have no jurisdiction over the parties or the subject-matter." Dietrichs v. Shaw, 43 Ind. 175, 179 (1873) (emphasis added). Some years later, when that court reconsidered the result in Dietrichs,[9] it steadfastly adhered to its earlier view, repeating it twice, that judicial immunity is not available for actions taken in the clear absence of personal jurisdiction. State ex rel. Egan v. Wolevar, 127 Ind. 306, 26 N.E. 762 (1891). The court observed: "when a court ...has in a given case jurisdiction of the subject-matter and of the parties interested ... [it has] immunity." Id., 127 Ind. at

9 The Indiana Supreme Court in Dietrichs had affirmed a damage judgment against a judge who had caused a defendant to be improperly arrested. The defendant had received actual, but technically insufficent, notice of the action. As the Egan court recognized, Judge Dietrichs had attempted properly to secure personal jurisdiction over Shaw, and his immunity was not divested by his mistake.

315, 26 N.E. at 765 (emphasis added). See also id., 127 Ind. at 319-20, 26 N.E. at 766. And in State v. Libbert, 96 Ind. App. 84, 90, 177 N.E. 873, 875 (1931) (en banc), reh. denied, 96 Ind. App. 84, 180 N.E. 757 (1932), the Indiana Court of Appeals held that "where there is a total lack of jurisdiction of either the person or the subject-matter, the judge's office is no protection to him." Indiana courts have not waivered from that view, and have consistently held that a judge has power to hear and determine an action only where he has jurisdiction over the subject-matter and the parties. State ex rel. Board of Sanitary Commissioners v. Superior Court, 247 Ind. 617, 621, 220 N.E. 2d 336 (1966).

C. The Policies Supporting Judicial Liability for Acts Taken in the Clear Absence of Subject-matter Jurisdiction Require Similar Liability for Acts Taken in the Clear Absence of Personal Jurisdiction

It is not surprising these courts have held that there is no judicial immunity when a court acts in the clear absence of personal

jurisdiction as well as subject-matter jurisdiction. The policies canvassed in Bradley and Pierson, which authorize remedies against judges who act when "jurisdiction" is not even arguably present, are as applicable to personal jurisdiction as to subject-matter jurisdiction. The difference between acting in excess of personal jurisdiction (for example, where service was attempted but improperly effectuated) and acting in the clear absence of personal jurisdiction (where a defendant had been convicted and sentenced without notice or trial) is at least as clear as the difference between excess of and absence of subject-matter jurisdiction described by Justice Field in Bradley v. Fisher.

Justice Field found it useful in Bradley v. Fisher to analyze the scope of judicial immunity by using a hypothetical example of a probate judge attempting to decide a criminal case. Such a judge, the Court reasoned, would have no immunity because he would have acted in the clear

absence of subject-matter jurisdiction. Other examples can be similarly useful here. Consider Judge A, with jurisdiction over criminal cases who, in the absence of any grand jury indictment or prosecutorial information, or trial or notice, draws up a judgment of conviction for murder and a sentence of death against some person who has offended him, and immediately orders the prescribed punishment. Or Judge B, with jurisdiction over civil commitment, who suddenly, on his own motion and without notice or hearing, commits a neighbor to the county hospital to remove the neighbor from a land auction each plans on attending the next day. Or Judge C, with general jurisdiction, who suddenly enters a judgment without notice or hearing permitting a mother to cut off her daughter's legs, in the words of the instant petition, "to prevent unfortunate circumstances to occur." (Appendix at A25) Each of these judges is in precisely the same situation as the hypothetical probate judge trying criminal cases hypothesized by Justice Field in Bradley v. Fisher. Each lacks any

semblance of personal jurisdiction and each therefore lacks immunity. Jurisdiction is as wholly absent in our hypotheticals as in Justice Field's.

The policies supporting judicial immunity require no different result. The imposition of liability when personal jurisdiction is so patently absent, like the imposition of liability when subject matter jurisdiction is patently absent, imposes no burden on judges, will not intimidate judges, and will not penalize fearless and principled decision-making. Those circuits which have explicitly defined "clear absence of jurisdiction" as including absence of personal jurisdiction show no increased number of cases against judges, or weakening of judicial independence or principled decision-making. The historical record dating at least from 1926 demonstrates that withdrawing the shield of judicial immunity from actions taken in the clear absence of personal jurisdiction has no deleterious effect on either judicial dockets or behavior. Yaselli v. Goff, 12 F. 2d 396, 402

(2d Cir. 1926). See also, e.g., Cuiska v. City of Mansfield, 250 F. 2d 700, 702 (6th Cir. 1957).

Indeed, the effect is precisely to the contrary. The imposition of liability for this extremely narrow class of cases is essential to the proper functioning of our adversary system. Justice cannot be achieved when only one side to a controversy is heard. The remedies for outrageous judicial conduct taken in the clear absence of jurisdiction which Bradley and Pierson specifically preserve and rely on to check misconduct--namely, appeal and impeachment--are of no avail where, as here, the judicial action is taken in secret, hidden from the public record, and carried to fruition by deception. For these reasons, settled law provides that some semblance of personal as well as subject-matter jurisdiction is a necessary prerequisite for immunity, and that judges can be sued when they act in clear absence of personal jurisdiction.

II. UNDER SETTLED LAW, DEFENDANT STUMP IS NOT ENTITLED TO JUDICIAL IMMUNITY BECAUSE HE ACTED IN THE CLEAR ABSENCE OF SUBJECT MATTER JURISDICTION.

There can be no doubt, and petitioners do not dispute, that the Court of Appeals correctly stated the rules applicable to judicial immunity, derived from Bradley v. Fisher and Pierson v. Ray. We think it equally clear that the Court of Appeals correctly applied the rule of those cases in holding that Judge Stump acted in the clear absence of jurisdiction. The court's opinion persuasively analyzes the matter, and is well-supported by respondents' brief in this Court. There is no need for amici to rehearse those arguments again. However, the three arguments offered by petitioners by undermine the Court of Appeals' ruling would substantially broaden the category of cases in which immunity has previously been considered appropriate. Amici believe that further analysis of those arguments is therefore necessary.

A. General Jurisdiction Over "All Other Causes, Matters, and Proceedings," Is Not Subect Matter Jurisdiction To Order a Tubal Ligation.

Petitioner's reliance on an Indiana statute conferring general jurisdiction on the Indiana Circuit Court is misplaced. The statute provides in pertinent part:

> "...and it shall have jurisdiction of all other cases, matters, and proceedings where exclusive jurisdiction thereof is not conferred by law upon some other court, board or officer." I.C. §33-4-4-3.

Petitioners argue that this section clothes Judge Stump with absolute immunity for any "rulings" he makes in connection with anything he chooses to designate a "matter" or "proceeding," apparently without limit as to what those "matters" might involve. That is not, and cannot be, the law.

Petitioners' theory forces them to construe the Indiana Appellate Court's decision

in A.L. v. G.R.H.[10] as leaving intact subject matter jurisdiction over parental requests for tubal ligations, even though that case squarely held that courts of general jurisdiction may not authorize parents to cause tubal ligations to be performed on their children.[11] Petitioners thereby assert that Judge Stump would be immune if he approved a similar petition today. That result is clearly intolerable, and far beyond what A.L. v. G.R.H. contemplates or

10 325 N.E. 2d 501 (Ind. App. 1975).

11 "In 1975, the Indiana Appellate Court in A.L. v. G.R.H., 325 N.E. 2d 501 (Ind. App. 1975) held that parents may not be authorized by courts of general jurisdiction to cause tubal ligations to be performed on their children under any circumstances. The Decision did not, however, remove jurisdiction of such subject matter from the circuit courts. It simply issued a judicial fiat prohibiting such authorizations. Nowhere is it suggested that should such a Petition be presented to a judge of a circuit court in any county in Indiana that he did not have jurisdiction to deal with the Petition." Brief for Petitioners at 18. See also Brief for Petitioners at 27.

Bradley requires. A court of general jurisdiction is still a court of law;petitioners' theory confuses general jurisdiction with the limitless and lawless jurisdiction of an absolute monarch. There is no support in case law, or the policies behind judicial immunity, to construe general jurisdiction statutes to confer subject-matter jurisdiction over petitions by some citizens for "approval" of castration, or amputation, or murder--or sterilization--of their children, or of other persons. The outrageous quality of the examples serves to emphasize the absurdity of petitioners' argument.[12]

The argument that the general jurisdiction provided by I.C. §33-4-4-3 does not include subject-matter jurisdiction to approve the sterilization petition in this case is

12 "There are other examples of extreme and unauthorized remedies not distinguishable from the present case. If Judge Stump were said to be acting validly under the power of courts to create new common law, a judge of general jurisdiction could order, upon an affidavit and petition similar to the one in the instant case, that a United States citizen should be disenfranchised because he is "un-American." Clearly such a remedy would be beyond the judge's general jurisdiction." Sparkman v. McFarlin, 552 F. 2d 172, 176 n. 7 (7th Cir. 1977).

reinforced by the care which the Indiana legislature had taken in other statutes explicitly to grant such jurisdiction over sterilization under narrowly limited circumstances with strict procedural safeguards. "When the law is affirmative that a thing should be done by certain persons or in a certain manner, this affirmative matter contains a negative that it shall not be done by other persons or in another manner." State ex rel. Bingham v. Home Brewing Co. of Indianapolis, 182 Ind. 75, 105 N.E. 909, 916 (1914). Section 16-13-13-1 of the Indiana Code authorized sterilization only of institutionalized feeble-minded persons, and then only after notice to the person or a representative, and after an evidentiary hearing. I.C. 16-13-13-2. This proceeding takes place not in the Circuit Court but before a board established by the Superintendent of each public hospital, and any recommendation for sterilization requires approval by the state commissioner of mental health. Only if such an order were granted could there be a proceeding in the circuit court, an

appeal by the person to be sterilized. I.C. 16-13-13-3. Examination of these provisions of Indiana Law compels the conclusion that the statute conferring general jurisdiction on the Indiana circuit courts is no way granted general jurisdiction over sterilization proceedings not specifically provided for. To the contrary, the legislative enactment of I.C. 16-13-13-1 through -3 plainly deprived the circuit courts of subject matter jurisdiction to order the sterilization of Indiana citizens unless those citizens were institutionalized and then only if the statutorily mandated procedures were followed.[13] The analysis urged here is supported by Wade v. Bethesda Hospital, 337 F. Supp. 671 (S.D. Ohio 1971), a case identical with this in all essential respects. In Wade, the district court rejected an argument that a state judge's

13 All Indiana statutes with respect to the sterilization of feeble-minded persons were repealed by Acts 1974, P.L. 60, §1.

sterilization order, entered without any express statutory authority or common law support, was at most in excess of that court's "plenary powers at law and equity." The court found, instead, that jurisdiction was completely absent. It looked to see whether under any conceivable set of circumstances or conditions Ohio law would permit a judge to order a person to submit to sterilization, much as Justice Field in Bradley looked to see whether a probate judge could ever hear a criminal proceeding. In Wade, as in Justice Field's hypothetical, it was clear that the court's order was not within the range of orders and cases over which the court had subject-matter jurisdiction. Here too, as the Court of Appeals correctly held, neither the Indiana general jurisdiction statute nor common law gave Judge Stump subject-matter jurisdiction over petitions for "approval" of tubal ligations.

B. Jurisdiction to Determine Jurisdiction Is Not Subject Matter Jurisdiction Sufficient to Support Judicial Immunity.

Perhaps recognizing that Judge Stump had no subject matter jurisdiction to consider the petition for sterilization, petitioners rely on the Indiana circuit court's unquestioned jurisdiction, to determine its own jurisdiction to create sufficient subject matter jurisdiction to shield Judge Stump with immunity. Brief for Petitioners at 15-18. But that argument consists of no more than the linguistic happenstance that American law uses the word "jurisdiction" in various senses. It proves too much. Justice Field was certain that the hypothetical probate judge in Bradley v. Fisher would have no immunity if he undertook to decide a criminal case, even though (like all judges) probate judges have jurisdiction to consider their own jurisdiction. Plainly, the Court in Bradley did not believe that a probate judge's admitted jurisdiction to consider a criminal indictment brought before him

(if only to reject it) was subject matter jurisdiction sufficient to create immunity. Furthermore, federal district courts regularly take "jurisdiction" over cases which are then dismissed for lack of subject matter jurisdiction (or jurisdiction over the parties), and appellate courts take "jurisdiction" over these dismissed cases.[14] Petitioners' error is patent. It is tautological to contend that a court is disabled from dismissing for lack of jurisdiction by its very consideration of a case. If petitioners are correct--if jurisdiction to consider whether the court has subject matter jurisdiction is the same as subject matter jurisdiction sufficient to create immunity--then judicial immunity exists in each and every case

14 In Mansfield, Coldwater & Lake Michigan Ry. v. Swan, 111 U.S. 379 (1884), for example, this Court, after considering (taking "jurisdiction" over) a suit removed from state court, dismissed for lack of subject matter jurisdiction.

"considered" by a court. Of course, neither Bradley nor the myraid cases before or after contemplated such a result. Accordingly, although the district court correctly asserted that "Judge Stump surely had jurisdiction to consider the petition and to act thereon," it incorrectly held that Judge Stump, ipso facto, had subject matter jurisdiction sufficient to confer immunity.

C. The Court of Appeals' Holding That Judge Stump Acted in the Absence of Subject Matter Jurisdiction Was Not Grounded on His Procedural Errors, Irregularities, or Deficiencies.

Petitioners contend that the Court of Appeals relied on Judge Stump's procedural errors for its holding that Judge Stump had no subject-matter jurisdiction. Brief at 18-23. Amici agree that immunity is not lost by procedural errors. E.g., Jacobson v. Schaefer 441 F. 2d 127 (7th Cir. 1971). However, the Court of Appeals holding in this case does not rest in any way on the tragic procedural errors committed by Judge Stump.

There is no "error" or "deficiency" here which would have given Judge Stump any better claim to subject matter jurisdiction had he corrected it. The problem is not that notice was improperly given, but that there was no conceivable case or proceeding in which Judge Stump had jurisdiction to order sterilization, whether he properly gave notice or not. Each of the cases cited by petitioners (Brief at 18-23) to support their argument that immunity is not lost through procedural errors or deficiencies is therefore inapposite. For example, in Sullivan v. Kelleher, 405 F. 2d 486 (1st Cir. 1968), cited by petitioners, the court correctly held that a judicial officer was immune where he acted in an eviction case of which defendant had received actual, but legally insufficient, notice. As that court recognized, had there been no error in the notice, subject matter jurisdiction would clearly have been present. Similarly, in Williams v. Sepe, 487 F. 2d 913 (5th Cir. 1973), the defendant judge had subject matter jurisdiction over the criminal contempt charge

of which the plaintiff complained, and the court properly found that this subject matter jurisdiction was not defeated by the judge's error in giving only oral, not written, notice. Here, however, as the Court of Appeals' opinion in this case correctly demonstrates, even with the strictest adherence to procedural niceties Judge Stump had no jurisdiction to order a tubal ligation. Accordingly, the Court of Appeals correctly held that petitioner Stump acted in the clear absence of subject-matter jurisdiction, a holding not dependent on that court's consideration of procedural irregularities.[15]

15 As argued in Point I, supra, Amici also believe that the decision below can be affirmed on the theory that Judge Stump acted in the clear absence of personal jurisdiction. The lack of personal jurisdiction in this case is not based on procedural errors, as in Sullivan v. Kelleher and Williams v. Sepe, supra. Steps necessary to exercise personal jurisdiction were not carried out mistakenly in this case; they were not carried out at all.

III 42 U.S.C. §1988 REQUIRES THE ADOPTION OF STATE IMMUNITY LAW WHERE THAT LAW BETTER SERVES THE REMEDIAL POLICIES OF §1983

Amici believe that Indiana and federal immunity law each lead to the same result here, and that Judge Stump is liable because he acted in the clear absence of personal and subject-matter jurisdiction. However, if this Court should disagree, or decide to expand the immunity which Bradley, Yaselli, and Pierson currently provide, the decision below must nevertheless be affirmed. When federal and state immunity rules lead to different results in a §1983 case, 42 U.S.C. §1988 obligates federal courts to choose the rule which better serves the remedial purposes of §1983.[16] Therefore, if respondents cannot recover under the Bradley rule, 42 U.S.C. §1988 requires the adoption of the narrower

16 Although the Seventh Circuit did not purport to apply §1988 or Indiana law to this case, its decision is fully supported by, and consistent with, the result required by §1988.

Indiana immunity rule.

When 42 U.S.C. §1983 provides the cause of action, 42 U.S.C. §1988 instructs federal courts what remedial law to apply. Moor v. County of Alameda, 411 U.S. 693, 703 (1973).

Section 1988 provides:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said

> courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

In Sullivan v. Little Hunting Park, 396 U.S. 229, 240 (1968), this Court held that where an issue of damages was not governed by federal statutory law, "both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes. Cf. Brazier v. Cherry, [293 F. 2d 401] (5th Cir. 1961). The rule of damages, whether drawn from federal or state sources, is a federal rule, responsive to the need whenever a federal right is impaired." (emphasis added). If the Court finds that the Bradley-derived federal rule precludes recovery, it will essentially have found in the words of §1988, that federal law is not "suitable", not "adapted" and "deficient" in protecting and vindicating respondents' civil rights. Sullivan would then require adoption of the Indiana rule since it would better serve the remedial

purpose of §1983 by providing a remedy for the deprivation of Linda Sparkman's civil rights .

The analysis urged here is fully consistent with Pierson v. Ray. Pierson's holding is a negative one--Congress did not intend to abolish the immunities state courts had recognized under common law. Pierson did not hold that Congress intended federal courts to resolve immunity questions without reference to state law when state law is more suitable to the protection of civil rights; §1988 is directly to the contrary, as Sullivan v. Little Hunting Park teaches.[17]

Moor v. County of Alameda, 411 U.S. 693 (1973), holding that §1988 was not

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17 In Jobson v. Henne, 355 F. 2d 129, 133 (2nd Cir. 1966), and Nelson v. Knox, 256 F. 2d 312, 314 (6th Cir. 1958) (Stewart, J.), courts declined to apply state immunity law that was less protective of civil rights than the Bradley rule. Although each court broadly announced a rule against applying

[Footnote Continued]

"meant to authorize the wholesale importation into federal law of state causes of action," is not to the contrary. The dismissal of a county defendant in a civil rights suit in Moor was for lack of jurisdiction, in accordance with this Court's holding in Monroe v. Pape, 365 U.S. 167 (1961) that §1983 had no application to municipalities. Therefore, §1983 was simply unavilable in Moor to create a cause of action. Here, however, §1983 clearly creates a cause of action against officials of every kind. Immunity (absolute or qualified) is simply a defense which can defeat recovery, and is generally determined on

[Footnote 17 Continued]
state immunity law in civil rights actions to preclude state nullifcation of §1983, neither court cited §1988. Their holdings can be justified on the narrower statutory ground for decision provided by that section: application of the more favorable federal immunity laws was required by §1988, a conclusion affirmed later by Sullivan.

the basis of the requisite factual showing. E.g., Wood v. Strickland, 420 U.S. 308 (1975), Barr v. Matteo, 360 U.S. 564, 574 (1959); Pierson v. Ray, 352 F. 2d 213, 217 (5th Cir. 1965), aff'd on this ground 386 U.S. 547 (1967). [18]

Adherence to Sullivan's direction to choose the state or federal rule which better serves the remedial policies of §1983 will not impair valid state interests, or create unmanageable problems. Apparently, no state extends broader judicial immunity than the federal immunity rule of Bradley v. Fisher. For those states which have decided that justice is better served by holding their judges to a

18 See also Wade v. Bethesda Hospital, 337 F. Supp. 671 (S.D. Ohio 1971) and Gregory v. Thompson, 500 F. 2d 59 (9th Cir. 1974), where plaintiffs recovered damages against judges on §1983 causes of action after factually demonstrating that defendants fell outside the Bradley rules and had acted in the clear absence of jurisdiction.

stricter standard, it is neither unfair nor unjust to permit federal litigants to recover for deprivations of their civil rights where the state rule would permit recovery. The actions of state judges are necessarily taken with knowledge of the liability to which they are subject under state law. Making the federal immunity rule coextensive with the state immunity rule would not be unfair and would not unduly limit the circumstances in which judicial immunity is considered appropriate.

Accordingly, if the Court finds that respondents are not entitled to recover under the federal rule of Bradley v. Fisher, Amici urge that §1988 requires adoption of Indiana immunity law as "the federal rule responsive to the need" for remedying the federal right that has been impaired. Sullivan v. Little Hunting Park, supra at 240.

IV 42 U.S.C. §1983 WAS INTENDED TO ABOLISH COMMON LAW JUDICIAL IMMUNITY, AND TO RENDER JUDGES EQUALLY LIABLE WITH OTHER OFFICIALS FOR DEPRIVATIONS OF CIVIL RIGHTS

Amici recognize that the Court is unlikely to reconsider its holding in Pierson v. Ray, 386 U.S. 547 (1967), that federal common law judicial immunity is applicable to suits under 42 U.S.C. §1983. We do not urge the Court to do so. However, we believe that the legislative history regarding Congressional intent with respect to judicial immunity under §1983 should nonetheless be available for the Court's examination here for two reasons. First, because the evidence unfiormly suggests that the 42nd Congress was hostile to judicial immunity and sought to abolish it in civil rights actions, the legislative history is strong reason for the Court to decide against broadening the immunity already afforded by Pierson. Second, if the Court decides that the judicial immunity portion of Pierson is to be

reexamined, we believe that close study of the legislative history will compel the Court to overrule Pierson and to restore the remedies the 42nd Congress clearly intended to provide for deprivations of civil rights by all state officials.

Without commenting on the legislative history carefully detailed in the dissenting opinion of Mr. Justice Douglas, the majority opinion in Pierson asserted without analysis or citation that "the immunity of judges for acts within the judicial role is...well established, and we presume that Congress would have specifically so provided had it wished to abolish the doctrine." 386 U.S. at 554-55 (footnote omitted).

However, research has established that immunity was not as well established as Pierson asserted. Of the 37 states existing in 1871, only 13 had adopted absolute immunity, 6 provided only a qualified immunity, 9 had not clearly

resolved the issue, and 9 had not yet faced the issue.[19] Immunity of English judges depended on the court in which the judge sat, and would not have extended to the defendant magistrate in Pierson.[20]

More importantly, as commentators have noted,[21] the language of the predecessor statute for §1983, Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, and the legislative history which documents its passage, clearly refute Pierson's suggestion that Congress meant to retain existing judicial immunities for civil rights suits.

19 See Note, Liability of Judicial Officers Under 42 U.S.C. §1983, 79 Yale L.J. 322, 326-27 (1969) [hereinafter, "Yale Note"]. See also Note, Immunity of Federal and State Judges from Civil Suit--Time for a Qualified Immunity," 27 Case Western Reserve L. Rev. 683, 731 [hereinafter "Case Note"].

20 See generally Yale Note, supra n. 19, at 325; Case Note, supra n. 19, at 732 nn. 27-29.

21 See, eg., Yale Note, supra n. 19, at 327-38; Case Note, supra n. 19 at 738-40.

The predecessor statute, Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, provides for no exceptions, no immunities. It applied to "any" person who under color of state law deprived "any" person of his federal constitutional or statutory rights.[22]

The legislative history of Section 1 of the Civil Rights Act of 1871 makes it clear that Congress intended to render liable state judges who under color of state law knowingly and willfully deprived persons of their constitutional rights.

22 As altered by the reviser who prepared the Revised Statutes of 1878 and as printed in 42 U.S.C., the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as inclusive as "any", but the origianl parallelism of "any" in describing culprit and victim makes it even clearer that Congress did not intend sub silentio to grant immunity to judges.

The reviser removed other language that made it even clearer no such immunity was intended. As enacted, the section stated that any person shall be liable

[Footnote Continued]

The Congress was concerned not with protecting good judges or other public servants against having to face charges of wrongdoing,but rather with defiance of law by mobs and by bad officials, including judges. Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress."[23] It was shocked at the

[Footnote 22 Continued]
for depriving persons of their constitutional rights, etc., under color of state law, "any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding." (Emphasis supplied)

The reviser lacked authority to alter law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-93; 19 Stat. 268. ch. 82, §4, as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.

23 Cong. Globe, 42nd Cong., 1st Sess. (Congressman Lowe of Kansas, March 31, 1871 p. 374, col. 3).

record of many judges.[24] It was, indeed, the breakdown of justice that gave rise to

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24 See, for example:

Senator Sherman of Ohio (summing up conference report): "Spreading terror and violence...now exist unchecked by punishment, independent of law, uncontrolled by magistrates." Cong. Globe, 42nd Cong., 1st Sess., Apr. 19, 1871, p. 820, col. 2.

Congressman Rainey of South Carolina: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." Id., Apr. 1, 1871, p. 394, col. 3.

Congressman Beatty of Ohio: "The remedy is needed because of 'prejudiced juries and bribed judges.'" Id.,April 3, 1871, p. 429, col. 2.

Senator Osborn of Florida; "These men with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or foul, that loyal men shall not remain in power, ought not to sit upon juries and administer the laws enacted to punish their own crimes." Id., Apr. 13, 1871, p. 654, col. 2.

Congressman Garfield of Ohio: "Even where the laws are just and equal on their face, yet by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the

[Footnote 24 Continued]

the need for legislation. See generally, Monroe v. Pape, 365 U.S. 167, 174-83,

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[Footnote 24 Continued]

people are denied equal protection." Id., Apr. 4, 1871, App. p. 153, col. 3.

Congressman Porter of Virginia: "The outrages committed upon loyal men there are under forms of law." Id., Apr. 4, 1871, App. p. 277, col. .

Congressman Burchard of Illinois: "... if...in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction ...the State has not afforded to all its citizens the equal protection of the laws." Id., Apr. 6, 1871, p. 315, col. 1.

Senator Pratt of Indiana: "[the laws] only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of her temples." Id., Apr. 6, 1871, p. 505, col. 3.

See also the complaint of a Louisiana loyalist to Carl Schurz that "men who held commissions in the rebel army, who signed the ordinance of secession,...who took a leading part in the rebel movement" were acting as judges in the southern states. Quoted in Stampp, The Era of Reconstruction, 1865-1877 (Knopt 1965) at p. 76.

235-36 (1961).[25]

All the members of Congress who spoke to the issue explicitly stated that the section applied to judges. None disagreed. See Cong. Globe, 42d Cong., 1st Sess., 1871: Congressman Arthur of Kentucky, Mar. 31, 1871, p. 365, col. 3, p. 366, col. 1; Congressman Sheldon of Louisiana, Mar. 31, 1871, p. 368, col. 1; Congressman Lowe of Kansas, Mar. 31, 1871, p. 376, col. 1; Congressman Lewis of Kentucky, Apr. 1, 1871, p. 385, col. 1. Cf. Senator Thurman of Ohio, Apr. 13, 1871, p. 217, col. 1 (Appendix). And see Monroe v. Pape, supra, 365 U.S. at 233, n. 49.

The legislative history of Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, also supports the conclusion that the 1871 Congress did not intend silently to exempt state judges who knowingly and willfully deprived persons of their constitutional rights. It does so because (i) the similar

25 "The purpose and scope of the [statute] must be viewed against the events and passions of the time." United States v. Price, 383 U.S. 787, 801, 803 (1966).

terms of the earlier Act were specifically referred to as a guide to the 1871 Act by its principle sponsor, Congressman Shellabarger, when he introduced the 1871 Act, Cong. Globe, 42d Cong., 1st Sess., 1871, Mar. 28, 1871, p. 319, col. 3, printed in Appendix, p. 68, col. 1 (see also Monroe v. Pape, supra, 365 U.S. at 171); and (ii) the mood of the earlier Congress casts light upon that of the later Congress. President Andrew Johnson vetoed the 1866 Act on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. Cong. Globe, 39th Cong., 1st Sess., March 27, 1866, pp. 1679, 1780, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.[26]

26 See Senator Trumbull of Illinois, Chairman of the Committee on the Judiciary, who led the successful effort to overrule the veto, at id., Apr. 4, 1966, pp.

[Footnote Continued)

The historical record could hardly be more clear. The 42d Congress stated as clearly as possible that what is now §1983

[Footnote 26 Continued)
1758-59, passim, and in particular:

> "But it is said that under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished...I admit that a ministerial official or a judge, if he acts corruptly or viciously or under color of an illegal act may be and ought to be punished..."
>
> "The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong.It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Johnson of Virginia, id., Apr. 5, 1866, p. 1778, col. 1; Senator Cowan of Pennsylvania, Apr. 5, 1866, p. 1783. Congressman Lawrence of Ohio, the only speaker on the subject in the House, said:

> "It is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens..." Id., Apr. 7, 1866, p. 1837, col. 1.

was intended to abolish absolute judicial immunity. In light of this record, judicial immunity should not be expanded. And, if Pierson is to be reconsidered, §1983 should be restored to its original design.

CONCLUSION

For the foregoing reasons, the American Civil Liberties Union, the Indiana Civil Liberties Union, and the Mental Health Law Project urge the Court to dismiss the petition for certiorari as improvidently granted, or to affirm the decision of the Court of Appeals.*

Respectfully submitted,

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* Amici wish to acknowledge the substantial assistance of Charles S. Sims, a candidate for admission to the New York bar, in the research and drafting of this brief.

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